



*Last updated 4.14.2020*

## **Things to Know NCDRC**

### **UPDATE: April 14, 2020.**

On April 13, 2020, Chief Justice Beasley entered an [order](#) extending the deadline for filings or acts that otherwise would be due within the period covered by the order, such that those acts will be treated as timely done if done by end of business on June 1. All mediation filings or actions, including filing the Report of Mediator form and Designation of Mediator form, that are due to be filed or to occur on or after March 16<sup>th</sup> and by June 1<sup>st</sup> will be deemed timely if done by June 1<sup>st</sup>. For example, if a deadline to mediate is July 1<sup>st</sup>, the deadline remains July 1<sup>st</sup>. If the deadline to mediate is April 31<sup>st</sup>, the completion of mediation by June 1<sup>st</sup> would be considered timely. For more information, please review the [April 14, 2020, Memo](#) to mediators.

### **HISTORY:**

Chief Justice Beasley issued an order containing emergency directives on April 2, 2020. The Chief's [order](#) follows Governor Roy Cooper issuance of [Executive Order 121](#) on March 27, 2020, directing all individuals in the state to stay in their place of residence subject to limited exceptions. Chief Justice Beasley's April 2<sup>nd</sup> order provides that "North Carolina's courts are a critical government function and are therefore exempt from the [Governor's] Order. Nevertheless, [the courts] are directed, to the extent practicable, to maintain social distancing requirements, including 'facilitating online or remote access by customers if possible.'" **The Chief's April 2<sup>nd</sup> order states that all superior court and district court proceedings must be scheduled or rescheduled for a date no sooner than 1 June 2020, unless the proceeding will be conducted remotely.** Please see the April 2<sup>nd</sup> Order for additional exceptions.

The Chief Justice issued an Order on March 19, 2020 providing that if a deadline to act in a court proceeding falls between March 16, 2020 and April 17, 2020 the act is deemed timely if completed before or on April 17, 2020.

A Memo issued by the Chief Justice and NCAOC Director on March 15, 2020 clarified court proceedings to include non-essential in-person meetings. This includes mediations.

The Chief Justice issued an Order on March 13, 2020, effective March 16, 2020, to schedule or reschedule all superior court and district court proceedings to a date no sooner than 30 days from the date the Order was issued, with few exceptions.

## NC Mediations

### Pre-litigation:

The Chief's orders do not cover pre-litigation mediations. However, best practices would be to either postpone all mediations until after the Chief's order expires or conduct the mediation telephonically.

### NC Court-Ordered Mediations:

**Court-ordered mediations under a DRC program may be conducted remotely, if the mediator, all parties, and any other persons required to attend agree to waive the requirement to be physically present and agree to hold the mediation using remote technology.** Rule 4 of the MSC and FFS Rules provide a mediation may be conducted via electronic means with the agreement of all parties. If all parties do not consent to hold the mediation using remote technology, the matter shall be rescheduled until after June 1, 2020, in compliance with the Chief's order.

Cases that have NOT been Ordered to mediation, but have pending litigation, fall under the Chief's order, therefore mediators should refer back to the Court-Ordered Mediation guidelines, above. (Per NCAOC Office of General Counsel)

## Mediation Deadlines

Under the Chief's order issued April 13, 2020, any court processes, or actions required to be done from March 16 to June 1, will be deemed timely if completed by June 1, 2020. Therefore, all Orders to Mediate with a mediation deadline between March 16 to June 1, is postponed to June 1, 2020. For example, if a deadline to mediate is July 1<sup>st</sup>, the deadline remains July 1<sup>st</sup>. If the deadline to mediate is March 31<sup>st</sup>, the mediation deadline is now June 1.

\*Message from court-staff: "Mediation deadlines in district are always 30 days prior to the scheduled trial date unless they are condemnation cases or a DSO for a medmal or wrongful death is entered that states otherwise. If the trial is continued, the deadline is automatically extended and no need for unnecessary paperwork".

\*Please note, this may not be the case in all districts. Please refer to the local rules in your district.

## Court Filings

Chief Justice Beasley issued an Order on April 13, 2020, extending all filing deadlines. All mediation and filing deadlines, including the Report of Mediator form due between March 16th and June 1 will be deemed as filed timely if filed on or before June 1.

## North Carolina Industrial Commission

### **COVID-19 Update: Parties Must Appear Remotely for Mediations Conducted Prior to June 1, 2020**

Consistent with Chief Justice Beasley's April 2, 2020 Order, all mediations held in Industrial Commission cases prior to June 1, 2020 shall be conducted with all parties appearing remotely or, in the alternative, be rescheduled for a date on or after June 1, 2020. If all parties do not consent to appear remotely, then the mediation must be rescheduled for a date on or after June 1, 2020.

## NC Arbitration

Court ordered arbitration hearings should be continued under the Chief's ordered.

## Federal Court Mediations

Staff has reached out to all Federal Courts regarding mediations, below are the response(s) we have received to date. Check back for updates:

**Q:** "Can federal mediations be conducted remotely? If not, what about scheduled face-to-face mediations, can they be postponed and rescheduled?"

**A: Western District:** Yes – we will allow mediations to be conducted remotely during this time. Our attorneys set the mediation dates themselves to make sure they meet deadlines in the case management orders so the Court would not be involved in continuing a mediation itself – but rather other deadlines in the case that completion of mediation would affect. Our Local Rules provide that we are governed by the N.C. Mediation Rules so because of that we will also allow mediations to be conducted remotely during this time.

**(1) Rules Governing Mediation.** If a mediated settlement conference is ordered, it shall be governed by the *Rules Governing Mediated Settlement Conferences in Superior Court Civil Actions* promulgated by the North Carolina Supreme Court pursuant to N.C. Gen. Stat. § 7A-38.1 (the "Mediation Rules"), and by these Local Rules

**A: Eastern District:** Please visit the [Eastern District website](#) for up-to-date Orders.

**A: Middle District:** Please visit the [Middle District website](#) for up-to-date Orders.

## North Carolina Business Courts

On March 23, 2020, Chief Justice Cheri Beasley issued an [Order](#) declaring catastrophic conditions resulting from the public health threat posed by COVID-19. Chief Business Court Judge Louis A Bledsoe, III, entered an Order on March 23, 2020, following Chief Justice Beasley's orders declaring that catastrophic conditions exist throughout the State resulting from the public health threat posed by COVID-19. In Judge Bledsoe's Order, it states "that all pleadings, motions, or other documents and papers that were or are due to be filed in any action currently pending in the NC Business Court on or after 16 March 2020 and before the close of business on 17 April 2020 shall be timely filed if they are filed before the close of business on 17 April 2020".

\*Mediations are not directly addressed in Judge Bledsoe's Order, however the N.C. Business Court follows The Supreme Court of N.C. Rules for Settlement Conference and other Settlement Procedures in Superior Court. If all parties do not consent to hold the mediation using remote technology, the conference will need to be rescheduled in compliance with Chief Justice Beasley's order issued on March 13<sup>th</sup>.

## North Carolina Advocates for Justice

The NCAJ is here to help as we confront unprecedented challenges during this time of national emergency. To find links to vital sources of updated information regarding how COVID-19 is affecting the practice of law and how legal institutions and professionals are responding, please visit the [NCAJ website](#).

## Miles Mediation

Check the [Miles Mediation page](#) for upcoming webinars.

Charlotte mediators Jason James and Steve Dunn are also teaming up to do a webinar on CLE. Check back for additional information.

**TODAY, April 14 - 1:00-2:15 pm ET**

**[Ready Camera One: Remote Depositions and Mediation in the Time of Social Distancing](#)**

Join attorneys of Freeman Mathis & Gary: Jennifer Markowski, Ken Menendez, Andy Treese, Jennifer Adair, and Miles neutrals Susan Forsling, David Nutter, and Greg Parent for an

overview of how to move cases forward through mediations and depositions using video conferencing technology.

[Register Here](#)

**April 16 - Noon ET**

**Force Majeure in a Pandemic. Litigation or Project Management?**

With many lawyers anticipating a tidal wave of litigation arising out of the pandemic, force majeure clauses are front and centre of many businesses' focus. Hear from a national panel comprised of Brie Buchanan, *Associate General Counsel at Neenah*, Sloan Perras, *General Counsel at Foss Marine*, and experienced neutrals Joe Murphey and Nigel Wright.

[Register Here](#)

**April 23 - Noon ET**

**Virtual Arbitration: Practical Advice on Moving Forward in the Current Environment**

Join arbitrators Jennifer Grippa and Matt Thiry for an overview of how to proceed with arbitration matters virtually, including conducting a virtual hearing, through the use of video conferencing technology. Learn how to use innovative technology and online platforms to share exhibits, examine witnesses, and present evidence in a digital space.

[Register Here](#)

**April 30 - Noon ET**

**Virtual Mediation for Commercial Disputes**

This webinar with Nigel Wright will address the key issues that parties should consider before they participate in a virtual mediation. The program will discuss how to best prepare for a virtual mediation, consider the importance of each element that goes into a mediation and talk about the pros and cons of mediating virtually for commercial disputes.

[Register Here](#)